

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

REV. NOLAN McKENZIE,

Plaintiff,

v.

Case No. 08-2510-KHV-GLR

SEARS, ROEBUCK AND
COMPANY, INC.,

Defendant.

ORDER

Pending before the Court is *pro se* Plaintiff's "Motion to State Correct Title of Defendant and to Strike Defendant's 'Response to Plaintiff's Motion for Order and Judgment and Request to Expedite Pre-Trial Conference'" (doc. 15). It contains several requests for relief. It first requests the Court to strike Defendant's Response (doc. 8) to Plaintiff's Motion for Order and Judgment. Plaintiff also asks the Court to correct the title of Defendant to CitiBank U.S.A. and allow him to amend his previous demand for damages. He further proposes that the Court hold a telephone conference to determine an out-of court settlement and in lieu of a pretrial conference

Defendant has filed a response (doc. 17). It argues that Plaintiff has failed to state any grounds for striking its Response to Plaintiff's Motion for Order and Judgment. The Court agrees. Plaintiff has provided no basis for striking Defendant's November 10, 2008 Response to Plaintiff's Motion for Order and Judgment. On December 19, 2008, moreover, the Court overruled Plaintiff's Motion for Order and Judgment (doc. 18). The Court thus

denies as moot the request to strike Defendant's response to his Motion for Order and Judgment.

Defendant does not oppose the request to replace the named defendant, Sears, Roebuck and Company, Inc., with Citibank (South Dakota), N.A. It notes that Citibank USA, National Association acquired the Sears credit card accounts. Citibank (South Dakota), N.A. is the successor in interest to Citibank USA, National Association. Defendant also does not oppose a one-time amendment to Plaintiff's Petition, in accordance with federal and District of Kansas rules. The Court will therefore sustain as unopposed Plaintiff's request to amend his complaint by substituting Citibank (South Dakota), N.A. as the named Defendant.

With regard to Plaintiffs' proposal for a telephone conference in lieu of a pretrial conference, the Court finds this request is rendered moot by the scheduling conference held by the Court on January 15, 2009.

IT IS THEREFORE ORDERED THAT Plaintiff's Motion to State Correct Title of Defendant and to Strike Defendant's Response to Plaintiff's Motion for Order and Judgment and Request to Expedite Pre-Trial Conference is sustained in part and denied in part, as set forth herein. Plaintiff is hereby granted leave to file an amended complaint, correcting the name of defendant from Sears, Roebuck and Company, Inc., to Citibank (South Dakota), N.A. and amending his demand for damages as set forth in his motion. Such amended complaint shall be filed within **ten (10) days of the date of this Order.**

IT IS SO ORDERED.

Dated this 4th day of February 2009, at Kansas City, Kansas.

s/ Gerald L. Rushfelt
Gerald L. Rushfelt
U.S. Magistrate Judge

cc: All counsel and *pro se* parties